

INDIAN THEOLOGICAL STUDIES

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Malleswaram West P.O.

Bangalore-560 055 (India)

E-mail: stpetersinstitute@gmail.com

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THE REVISION TO BOOK VI ON SANCTIONS: A WELCOME NECESSITY!

Merlin Rengith Ambrose

merlinrengith@gmail.com

St Peter's Pontifical Institute

Bengaluru

1 INTRODUCTION

Nearly fourteen years after the revision initiated by Pope Benedict XVI, Pope Francis' Apostolic Constitution *Pascite gregem Dei*¹ ("Tend the Flock of God" – 1 Pet 5.2), on 23 May 2021, on the solemnity of Pentecost, promulgated the revised Book VI of the 1983 Code of Canon Law. It is the fruit of many important revisions of the Church's penal norms, which are always intended to be at the service of the *salus animarum*. The revised norms of Book VI of the Code go into effect when the *vacatio legis* (vacation of the law/suspensive period of the law) expires on 8 December 2021, on the solemnity of the Immaculate Conception. The new text is a more agile tool for correction, which is to be applied promptly to avoid serious evils and to soothe the wounds caused by human weakness.

This article aims at studying the mind of the lawgiver (*mens legislatoris*) about the revision to the Book VI on sanctions,

¹ *L'Osservatore Romano* (4 June 2021): 23/3.

such as the motives for the reform, the *iter* (journey) of the revision, the guiding principles for the revision, the right understanding of the penalty, the significance of a proper understanding of the concepts of charity (*caritas*) and mercy (*misericordia*) in the application of the penalty and finally the need to strike a balance between mercy and justice (*iustitia*) in the canonical spectrum of sanctions.

2 MOTIVES FOR THE REFORM

During the 20th century, the Church's major source of law, i.e., the Code of Canon Law, underwent two major revisions; the first leading to the 1917 Code of Canon Law,² modelled upon the civil legal codes which came into effect during the previous century and were generally based on the Roman law, and the second being the desire of both St. John XXIII and the Second Vatican Council to revise the Church's laws. The 1983 Code of Canon Law,³ promulgated by St John Paul II, was largely based upon the principles enunciated by the Second Vatican Council. Since then, many societal changes have taken place necessitating the updating of the Church's discipline regarding offences and penalties. In the latter decades of the 20th century, a false conception of mercy and charity, which tended to avoid judicial processes due to indeterminate penalties⁴ in the law itself, was often practiced

² The process of a single collection of Church's law was begun by Pius X in 1904 but was completed and promulgated only after his death by Benedict XV in 1917. *Codex Iuris Canonici*, Pii X Pontificis maximi iussu digestus Benedicti Papae XV auctoritate promulgatus, Typis Polyglottis Vaticanis, Romae 1921; English transl. in *The 1917 or Pio-Benedictine Code of Canon Law in English Translation*, E.N. Peter (Curator) (San Francisco: Ignatius Press, 2001).

³ *Codex Iuris Canonici*, Auctoritate Ioannis Pauli II promulgatus (Vatican City: Libreria Editrice Vaticana, 1983); Cf. *AAS* 75 (1983): 1-301.

⁴ For examples of indeterminate just penalty, see cann. 1365, 1368, 1369, 1370, §3, 1371, 1374, 1375, 1376, 1377, 1379, 1381, §1, 1384, 1386, 1389, §2, 1391, 1393, 1399; For examples of a punishment in relation to the gravity of the offence without further specification, see cann. 1388, §1, 1389, 1392; For examples of an indeterminate punishment, not excluding the possibility

by ecclesiastical authorities. The Code has indeterminate punishments which have to be just. But what is ‘just’ for a significant number of punishments are indeterminate⁵ for the law leaves it to the discretion of the competent ecclesiastical authority to decide the just penalty. Here, the Canon Law is at risk. When Church leaders use their authority to look for pastoral solutions to juridical problems, they could lose not only their juridical competence as recognized by the state, but also their moral authority *vis à vis* Catholic public opinion.⁶

Consequently, in the wake of the promulgation of the *ius vigens* (CIC 1983), it became obvious that the penal discipline of Book VI failed to meet the expectations it had raised. The canons concerning criminal law had significantly been reduced in size compared to the previous 1917 Code of Canon Law. The prescriptions of the 1983 Code of Canon Law were mostly indeterminate, precisely because it was felt that individual bishops and superiors, whose responsibility it was to enforce penal discipline, would better determine when and how to punish in the most appropriate manner. One of the aims of the revision, wrote Pope Francis, was to reduce the number of penalties left to the discretion of judges, especially in the most serious cases.⁷ Other texts of the Code were redefined according to the experience of the norms given on experiment (*ad experimentum*) in the period after the Second Vatican Council. Whereas the significant changes enshrined in old Book VI did not have the opportunity to confront the reality of the Church beforehand, and consequently were

of a more specific criminal provision, see cann. 1388, §2, 1389, §1, 1395, §2, 1396; For examples of a certain and a possible indeterminate penalty, see cann. 1357, 1370, §1, 1378, §3, 1385. (All these canons are as prescribed before the revision of the Book VI); Cf. K. Lüdicke (ed.), *Münsterischer Kommentar zum Codex Iuris Canonici* (Essen: Ludgerus Verlag, 1999), *passim*.

⁵ C. Coppens, “Misericordia Extra Codicem in Iustitia,” in *The Jurist* 71 (2011): 363.

⁶ *Ibid.*, 362.

⁷ *L'Osservatore Romano* (4 June 2021): 23/ 3.

promulgated straightaway in 1983. Consequently, there were innumerable setbacks experienced by Ordinaries in applying the penal norms amid such indeterminacy. Moreover, the concrete difficulty they faced was in combining the demands of charity with justice. Owing to these circumstances, the Holy See felt the need to compensate with its own authority for the shortcomings and limitations of the ordinary penal system, by way of exceptionally reserving for itself, the guidance of the penal discipline in the graver cases (*graviora delicta*).

On 1 June 2021, at the Press Conference to present the revised Book VI, Archbishop Filippo Iannone said that the necessary and long-awaited reform carried out in Book VI on Sanctions has the aim of rendering the universal criminal provisions increasingly adequate for the protection of the common good and of the individual faithful, more congruent with the requirements of justice and more effective and suitable for today's ecclesial context and environment.⁸ The reformed legislation is intended to respond precisely to this need, offering Ordinaries and Judges a succinct and useful tool, simpler and clearer norms, to encourage recourse to criminal law when necessary so that, respecting the requirements of justice, faith and charity may grow in the People of God (*populo Dei*).

Law follows life (*Lex sequitur vitam*), says a well-known axiom. In this vein, the Pope writes in *Pascite gregem Dei*:

Amid the rapid social changes we are experiencing, to respond adequately to the needs of the Church throughout the world, it became clear that the penal discipline promulgated by Saint John Paul II on 25

⁸ Intervention by Archbishop Filippo Iannone, Press Conference to present the new Book VI of the Code of Canon Law, 01.06.2021 in <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2021/06/01/210601e.html> (accessed on 27.07.2021).

January 1983 also needed to be revised. It needed to be modified in such a way as to enable Pastors to use it as a more agile salvific and corrective tool, to be employed promptly and with pastoral charity to prevent more serious evils and to heal the wounds caused by human weakness.⁹

3 ITER OF THE REVISION OF THE BOOK VI ON SANCTIONS

The revisions reflect almost two decades of work in updating, adding, clarifying and strengthening what the Church considers crimes and suitable canonical provisions for sanctioning. Holy Father Pope Benedict XVI, who had concretely and extensively experienced the limits and demerits of the penal system owing to his longstanding leadership as Prefect of the Congregation for the Doctrine of the Faith, formally ordered the Pontifical Council for Legislative Texts to initiate the process for the revision of Book VI. A *coetus studiorum* (group of study members) was immediately formed within the same dicastery with very erudite canonists in criminal law in September 2009. The process for the revision of Book VI was carried out in collegial collaboration and it involved several exchanges of suggestions and observations by many all over the world. The work of the *coetus studiorum* in Rome was always shared with a wider group of canonists. The first *schema*, drafted in 2011, was sent to all the Episcopal Conferences in the Catholic Church, the dicasteries of the Roman Curia, the Canon Law faculties in the ecclesiastical universities, the Major Superiors of the Institutes of Consecrated Life, the consultants and a countless number of other canonists. As a response, very many well-detailed observations (*animadversiones*) were received from the consultation. Taking into consideration all these consultations a new *schema* was drafted in 2016.

⁹ *L'Osservatore Romano* (4 June 2021): 23/3.

Further consultations with the dicasteries and consultants led to the finalisation of the text which was approved by the plenary assembly of the dicasteries on 20 January 2020. This document, with few more adjustments, principally on economic matters, was ultimately finalised by the Pontifical Council for the Legislative Text and presented to the Holy Father Pope Francis who signed the Apostolic Constitution *Pascite gregem Dei* on 23 May 2021, on the Solemnity of Pentecost, establishing its promulgation. As a result of the revision process, of the 89 canons that form this Book VI, 63 have been amended, 9 others moved while only 17 remain unchanged.

4 GUIDING PRINCIPLES FOR THE REVISION

The amendments (*amendationes*) carried out in the revised Book VI on Sanctions principally respond to three guiding principles which are the main criteria based on which the major changes are made in the Book VI on Sanctions.

4.1 UNIFORMITY BY CLEARLY PRESCRIBED DETERMINATE PENALTIES

First, unlike the text before, the revised Book VI sufficiently determines the penal norms in order to provide clear and precise guidance to those who apply them. The revised norms contain determinate penalties and eliminate, as much as possible, the discretionary power of judges or superiors in imposing a broad range of penalties. This would hopefully lead to a greater uniformity in the whole Church in the application of just penalty as provision for the discretion of the judges is reduced to the minimum. Moreover, in order to ensure that there is uniformity in the application of the penal laws in the Church, the revised Book VI has reduced the scope of discretion previously accorded to the authority, however without fully eliminating the necessary discretion for certain

particular types of offence which require the discernment of the Pastor. In the present revised Book VI, the offences are now better specified, unlike the cases previously grouped together; the expiatory penalties¹⁰ are now exhaustively listed in can. 1336;¹¹ and the text contains reference parameters to guide the evaluations of those who must judge the specific circumstances.

¹⁰ Expiatory penalties are intended for the public punishment for a serious delict and to bring about correction and conversion of the person. It is also for the deterrence of sinful behaviour. Expiatory penalties seek to compensate for the harm done to the life of the Church and their remission does not depend on repentance or correction of the offender, cf. S. Jerman, *Pope Francis' Amendments on Penal Laws of the Church* (Aluva: RIC Publications 2021), 16.

¹¹ Cf. <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2021/06/01/210601b.html>:

Can. 1336, §1. Expiatory penalties can affect the offender either for ever or for a determined or an indeterminate period. Apart from others which the law may perhaps establish, they are those enumerated in §§ 2-5.

§2. An order: 1° to reside in a certain place or territory;

2° to pay a fine or a sum of money for the Church's purposes, in accordance with the guidelines established by the Episcopal Conference.

§3. A prohibition:

1° against residing in a certain place or territory;

2° against exercising, everywhere or inside or outside a specified place or territory, all or some offices, duties, ministries or functions, or only certain tasks attaching to offices or duties;

3° against performing all or some acts of the power of order;

4° against performing all or some acts of the power of governance;

5° against exercising any right or privilege or using insignia or titles;

6° against enjoying an active or passive voice in canonical elections or taking part with a right to vote in ecclesial councils or colleges;

7° against wearing ecclesiastical or religious dress.

§4. A deprivation:

1° of all or some offices, duties, ministries or functions, or only of certain functions attaching to offices or duties;

2° of the faculty of hearing confessions or of preaching;

3° of a delegated power of governance;

4° of some right or privilege or insignia or title;

5° of all ecclesiastical remuneration or part of it, in accordance with the guidelines established by the Episcopal Conference, without prejudice to the provision of can. 1350 § 1.

§5. Dismissal from the clerical state.

4.2 PROTECT THE COMMUNITY, REPAIR THE SCANDAL AND COMPENSATE THE HARM

The second guiding principle that has influenced the reform is the protection of the community, the repair of the scandal as well as compensating for harm. The exercise of the Church's penal law is very often misunderstood as an application of simple penalties, rather than the exercise of discipline for the good of souls. This ministry of justice must always respect all the involved parties, for canon law itself, almost by definition, must secure justice for the individual, the Church itself, and especially for those who have been the victims of abuse in any form. The new text seeks to make the instrument of penal sanctions part of the ordinary form of pastoral governance of communities. Concretely speaking, the new texts emphasise on the imposition of a penal precept (can. 1319, §2), or the initiation of the sanctioning procedure (can. 1341), if the authority considers it prudently necessary or if it has ascertained that the restoration of justice (*restitutio iustitiam*), the correction of the offender (*emendatio rerum*), and the reparation of the scandal (*reparatio scandalum*) cannot be adequately accomplished by other means (can. 1341).¹² This need of pastoral charity is reflected in several penal canons in the book, emphasising the need to repair the scandal and the harm done. Can. 1361, §4 prescribes, "remission must not be granted until, in the prudent judgement of the ordinary, the offender has repaired any harm caused."

¹² Can. 1341: The Ordinary must start a judicial or an administrative procedure for the imposition or the declaration of penalties when he perceives that neither by the methods of pastoral care, especially fraternal correction, nor by a warning or correction, can justice be sufficiently restored, the offender reformed, and the scandal repaired. The other means are fraternal correction, warning or reproof and pastoral care or solicitude.

4.3 NECESSARY MEANS TO PREVENT OFFENCES

The third guiding principle is to enable the Pastor with the necessary means to prevent offences and to make timely intervention in order to correct situations which could otherwise become grave. However, it should be discreetly carried out without renouncing the necessary precautions for the protection of the presumed offender which is guaranteed in can. 1321, §1: “everyone is presumed innocent until the contrary is proven.”¹³ While accepting as inevitable the use of the administrative sanctioning procedure rather than the judicial process, the need to observe all the requirements of the right of defence in such cases, and to achieve moral certainty regarding the final decision, is emphasised, as well as the obligation of the authority to maintain the same attitude of independence that is required of the judge by can. 1342, §3. Another instrument granted to the Ordinary, in order to prevent offences, is the set of penal remedies enshrined in Book VI: warning, reprimanding, penal precept and vigilance. The new can. 1339, §4 states:

If on one or more occasions warnings or corrections have been made to someone to no effect, or if it is not possible to expect them to have any effect, the Ordinary is to issue a penal precept in which he sets out exactly what is to be done or avoided. §5. If the gravity of the case so requires, and especially in a case where someone is in danger of relapsing into an offence, the Ordinary is also to subject the offender, over and above the penalties

¹³ The presumption of innocence is a legal principle that every person accused of any crime is considered innocent until proven guilty. The sixth-century Digest of Justinian (D. 22.3.2) provides, as a general rule of evidence: *Ei incumbit probatio qui dicit, non qui negat* which means “proof lies on him who asserts, not on him who denies”. It is attributed to the second and third century jurist Paul. It was introduced in Roman criminal law by emperor Antoninus Pius; Cf. A. Watson, (ed.), *The Digest of Justinian* (Philadelphia: University of Pennsylvania Press, 1998), 67.

imposed according to the provision of the law or declared by sentence or decree, to a measure of vigilance determined by means of a singular decree.

Supervision or vigilance was not envisaged earlier, and the criminal precept is now given special regulation. These are not strictly speaking criminal sanctions and can also be used without a specific investigation procedure, but always in compliance with the requirements laid down for the issuing of administrative acts.

5 THE RIGHT UNDERSTANDING OF PENALTY

In the words of the Second Vatican Council, pastors are called to exercise their task of “counsel, exhortations, example, and even by their authority and sacred power” (cf. *LG*. 27), and “if necessary, also through the imposition or declaration of penalties, in accordance with the provisions of the law, which are always to be applied with canonical equity” (cf. new can. 1311, §2). The tone is well set with can. 1311, §2 for it prescribes that the imposition or declaration of penalties has to be done with canonical equity (*aequitas canonica*) which is a *via media*. At the same time, the threefold goal of canonical penalties is underscored: i) the restoration of justice (*restitutio iustitiam*), ii) the reform of the offender (*emendatio rerum*) and iii) the repair of scandal (*reparatio scandalum*) (cf. cann. 1311, §2; 1341). This is the rationale for penalties in the 1983 Code of Canon Law.¹⁴ It would imply that should a pastor fail to resort to the penal system when and where required, he is not fulfilling his function correctly and faithfully.¹⁵ Indeed, it is

¹⁴ B.T. Austin, “Prescription of Criminal Action in the *Ius Vigens*,” in *Studia Canonica* 54/2 (2020): 369.

¹⁵ Francis, Apostolic Letters issued Motu Proprio, *As a Loving Mother* (4 June 2016), in *AAS* 108 (2016): 715-717; *L'Osservatore Romano*, 10 May 2019, *Vox estis lux mundi*, no. 19, 3; https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html

out of charity that pastors should resort to the penal system keeping in mind its three purposes mentioned above in case all other pastoral measures have been fruitless in their attempt to correct them.¹⁶

5.1 NEED OF CHANGE IN SUPERIORS' MINDSET

The need of change in superiors' mindset is of utmost importance. That is precisely why can. 1311, which sets forth the Code's section on penal law, emphasizes the pope's call for a change in perspective and outlook towards the offences. While the old can. 1311 prescribed simply that the "the Church has the innate and proper right to constrain with penal sanctions Christ's faithful who commit offences," the new norm adds an important exhortatory second paragraph in the same canon. Can. 1311, §2 states:

The one who is at the head of a Church must safeguard and promote the good of the community itself and of each of Christ's faithful, through pastoral charity, example of life, advice and exhortation and, if necessary, also through the imposition or declaration of penalties, in accordance with the provisions of the law, which are always to be applied with canonical equity and having in mind the restoration of justice, the reform of the offender, and the repair of scandal.

This second paragraph, which is absolutely new in the revised Book VI, outlines in a nutshell the purposes of penal law, and the way in which it fits into the Church's life.

The revised can. 1341 also makes a substantive and important change reiterating the pope's proposed shift in mind-set. The previous wording of the can. 1341 prescribed:

¹⁶ D.G. Astigueta, "Medicinalità della pena canonica," in *Periodica* 99 (2010): 282.

Ordinary **is** to start a judicial or an administrative procedure for the imposition or the declaration of penalties only when he perceives that neither by fraternal correction nor reproof, nor by any method of pastoral care, can the scandal be sufficiently repaired, justice restored and the offender reformed.

The new version, in can. 1341, instructs that the bishop “**must** (*debet*) start a judicial or an administrative procedure” in such circumstances.¹⁷ In fact, in several places, the new text requires the bishops and the religious superiors to initiate penal processes or impose punishments when canon law has been violated, even for relatively minor offences, while the old text in those places encouraged them to leave the matter to their judgment. This shift emphasizes the new text’s general expectation that bishops and superiors will incorporate penal law into their ordinary governance of the Church’s life, as part of a general tightening of Church discipline.

5.2 TRUE CHARITY DEMANDS THE APPLICATION OF THE LAW

Perhaps the first thing that can be said about the new penal code for the Church comes not from the text of the new laws, but from Pope Francis’ apostolic constitution promulgating it. Pope said:

The observance of penal discipline is a duty for the entire People of God... [...] and in the past, great damage was

¹⁷ The revised can. 1341: “Ordinarius proceduram iudicalem vel administrativam ad poenas irrogandas vel declarandas promovere **debet** cum perspexerit neque pastoralis sollicitudinis viis, praesertim fraterna correctione, neque monitione neque correptione satis posse iustitiam restitui, reum emendari, scandalum reparari.” But the previous wording of the same can. 1341 was the following: Can. 1341: “Ordinarius proceduram iudicalem vel administrativam ad poenas irrogandas vel declarandas tunc tantum promovendam **curet**, cum perspexerit neque fraterna correctione neque correptione neque aliis pastoralis sollicitudinis viis satis posse scandalum reparari, iustitiam restitui, reum emendari.”

done by a failure to appreciate the close relationship existing in the Church between the exercise of charity and recourse — where circumstances and justice so require — to disciplinary sanctions. This manner of thinking — as we have learned from experience — risks leading to tolerating immoral conduct, for which mere exhortations or suggestions are insufficient remedies. This situation often brings with it the danger that over time such conduct may become entrenched, making correction more difficult and in many cases creating scandal and confusion among the faithful. For this reason, it becomes necessary for bishops and superiors to inflict penalties. Negligence on the part of a bishop in resorting to the penal system is a sign that he has failed to carry out his duties honestly and faithfully, as I have expressly pointed out in recent documents, including the Apostolic Letters issued *Motu Proprio As a Loving Mother* (4 June 2016) and *Vos Estis Lux Mundi* (7 May 2019).¹⁸

Many believe that the burgeoning sexual abuse scandals of recent decades are exacerbated by a culture of antinomianism.¹⁹ The seriousness of the cases of clerical sexual abuse in some countries dating back to the 1960s till 1980s was mitigated by their superiors treating criminal sexual offences principally as a pastoral problem which consequently led to the practice of moving abusive priests from parish to parish. It is true that a general tendency to avoid legal proceedings in the Church has led to a laxity in clerical discipline which enables clerical

¹⁸ *L'Osservatore Romano* (4 June 2021): 23/3.

¹⁹ Antinomianism, (Greek anti, “against”; nomos, “law”), doctrine according to which Christians are freed by grace from the necessity of obeying the Mosaic Law. The antinomians rejected the very notion of obedience as legalistic; to them the good life flowed from the inner working of the Holy Spirit. Antinomianism is a notion that the law in the Church and the idea of the Church as a coherent society in need of law is obsolete or at odds with Christian charity.

abusers to act with impunity. Pastoral considerations take precedence over legal applications.²⁰

5.2.1 To Correct the Offender is a Work of Charity (*Opus caritatis*)

In recent years, as has been noted by many during the work of revising the regulatory apparatus, the relationship of interpenetration between justice and mercy has at times been misinterpreted, fuelling a climate of excessive laxity in the application of criminal law, in the name of an unfounded opposition between pastoral care and law, and criminal law in particular.²¹ In order to avoid any misinterpretation of the spirit of the law, we need to understand certain elements clearly. There are two ways of looking at an offence. First, as something that hurts the offender himself; secondly, as something that tends to hurt other people who are injured or scandalized by it and to become a blow to the common good. And so correcting a wrongdoer is twofold. The first is to use correction as a remedy for an offence precisely because offence is bad for the wrongdoer himself, and this, aimed as it is at his improvement, is fraternal correction (*fraterna correctio*) taken in its proper sense. Ridding someone of an evil is really the same as doing him good, and is, therefore, an act of charity, for it is charity that makes us desire our friend's welfare and do our best to bring it about.²² It follows, then, that fraternal correction is also an act of mercy and charity, since it wards off from our brother the evil which is offence.

²⁰ Arthur Luysterman, "Een bisschop over leiderschap," in *Leiderschap in de Kerk*, eds. W. Kennes and M. van Stiphout (Leuven: Peeters, 1996), 146.

²¹ Intervention by Archbishop Filippo Iannone, Press Conference to present the new Book VI of the Code of Canon Law, 01.06.2021 in <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2021/06/01/210601e.html> (accessed on 27.07.2021).

²² R.J. Batten, ed., *St Thomas Aquinas, Summa Theologiae*, vol. 34 (Cambridge: Cambridge University Press, 2006), 277.

5.2.2 To Correct the Offender is an Act of Mercy (*Opus misericordiae*)

We should bear in mind that the works of mercy are both corporal (to give alms, visit the sick, *etc.*) and spiritual (teach the ignorant, give good advice, admonish sinners, pray for the deceased, *etc.*). Although both the corporal and spiritual works of mercy are necessary and important, St Thomas, following Church tradition, considers the spiritual works of mercy superior to the corporal ones, as they are more directly related with eternal salvation. Of these spiritual works of mercy, to admonish sinners is very important “because thereby we drive out our brother’s evil, namely sin, the removal of which pertains to charity rather than the removal of an external loss, or of a bodily injury, in so much as the contrary good of virtue is more akin to charity than the good of the body or of external things.” The second kind of correction applies a remedy to sin inasmuch as its evil consequences are felt by others, and especially in respect to the harm it does the common good. Such a correction is an act of justice.²³ Therefore, as St Thomas Aquinas prescribes, “Justice without mercy is cruelty; (and) mercy without justice is the mother of dissolution” (*Iustitia sine misericordia crudelitas est; (et) misericordia sine iustitia, mater dissolutionis*).²⁴ *Misericordia* and *equitas* have to restore the balance in order to guarantee the *bonum commune*. In the history of Church, *misericordia* and *equitas* as a *rigor iuris* give a canon law a remarkable flexibility and moderation.

5.2.3 A Balance between Mercy and Justice

Mercy tempers justice (*iustitia dulcore misericordiae temperata*) by diminishing the punishment or by making its application more benign. But it cannot run counter to justice or eliminate

²³ *Summa Theologica*, II-II, q. 30, a. 1, ad. 1; cf. R.J. Batten, ed., *St Thomas Aquinas, Summa Theologiae*, 287.

²⁴ Super Mattheum, Cap. V, l. 2.

it. Thus, when the balance between mercy and justice is lost, either the wicked are allowed to go unpunished or are punished with brutality. Both things lead to social chaos and cause confusion in people's minds. Indeed, failing to punish one who breaks divine or human laws weakens the notion of good and evil in people's consciences and leads to moral relativism. For its part, cruelty in punishment makes justice odious to the people. On several occasions, the Holy Father Pope Francis has repeated that the canonical sanction also has a reparatory and salutary medicinal function and seeks above all the good of the accused, so that "it represents a positive means for the realisation of the Kingdom, for rebuilding justice in the community of the faithful, who are called to personal and common sanctification" (To the Participants in the Plenary Session of the Pontifical Council for Legislative Texts, 21 February 2020). For the creation and maintenance of a social order and, therefore, for achieving and maintaining a good level of communion, there is a need for both justice and merciful love. An offender should be adequately punished for his offence so that justice is done and the sense of justice remains alive in society. Without the sense of justice, life among human beings degenerates into a law of the jungle. However, along with justice, St Thomas says, the offender should also be the object of mercy, taking into account some involuntary or not directly desired effects of his fault. This does not eliminate the punishment for the evil done but makes it more suave.

5.3 OBSERVANCE OF THE LAW AND ITS APPLICATION

While promulgating the *ius vigens*, (the law in effect, i.e., CIC 1983), St John Paul II stated:

The Code of Canon Law is extremely necessary for the Church. Since, indeed, it is organised as a social and visible structure, it must also have norms: in order that its

hierarchical and organic structure be visible, in order that the exercise of the functions divinely entrusted to her, especially that of sacred power and of the administration of the sacraments, may be adequately organised; in order that the mutual relations of the faithful may be regulated according to justice based upon charity, with the rights of individuals guaranteed and well defined [...]. The canonical laws by their very nature must be observed.²⁵

And Pope Francis underlines the importance of the observance of the laws for an orderly ecclesial life, and consequently recalls the need to intervene in the case of their violation. The observance and respect of penal discipline is the task of the entire People of God, but the responsibility for its correct application is the specific responsibility of the Pastors and Superiors of the individual communities. It is a task that belongs inseparably to the *munus pastorale* entrusted to them, and it must be exercised as a concrete and inalienable demand of charity towards the Church, the Christian community and possible victims, but also towards the offender, who needs not only mercy but also the correction of the Church (cf. *Pascite gregem Dei*).

6 CONCLUSION

The most extensive revision to the Book VI on Sanctions in the Code of Canon Law in four decades is a significant and welcome step forward for the whole Church. This

²⁵ John Paul II, Apostolic Constitution, *Sacrae disciplinae leges* for the Promulgation of the New Code of Canon Law (25 January 1983), in *AAS* 75/2 (1983) : xii-xii: “Ac revera Codex Iuris Canonici Ecclesiae omnino necessarius est. Cum ad modum etiam socialis visibilisque compaginis sit constituta, ipsa normis indiget, ut eius hierarchica et organica structura adspectabilis fiat, ut exercitium munerum ipsi divinitus creditorum, sacrae praesertim potestatis et administrationis sacramentorum rite ordinetur, ut secundum iustitiam in caritate innixam mutuae christifidelium necessitudines componantur, singulorum iuribus in tuto positos atque definitis.”

reinvigoration of canon law is a welcome necessity and it is an instrument for the *salus animarum* (salvation of souls). The use of penal discipline is part of the pastoral charity (*caritas pastoralis*) of those who must govern and protect their own communities of faith. Law is not an obstacle to pastoral governance but is absolutely necessary in legitimate oversight.

The reform, presented and considered necessary and long overdue, aims to make universal penal norms ever more suitable for the protection of the common good and of the individual faithful, more congruent with the demands of justice and more effective and adequate in today's ecclesial context, which is evidently different from that of the 1970s, the time when the canons of Book VI, now abrogated, were drawn up. The reformed norms are intended to respond precisely to this need, offering Ordinaries and judges an agile and useful tool, simpler and clearer norms, to encourage recourse to criminal law when this is necessary so that, respecting the demands of justice (*iustitia*), faith (*fides*) and charity (*caritas*) may grow in the people of God. We need to eagerly wait and see how effective the revised norms are going to be as it has just come into force on 8 December 2021.

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Indian Theological Studies
St. Peter's Pontifical Institute
Malleswaram West P.O.
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